IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 96 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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JALALLUDDIN JUSABALI ROJANI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 96 of 2002

MR BN KESHWANI for Petitioner No. 1-2

MR PR ABICHANDANI, APP, for Respondent No. 1

MR MUKESH R SHAH for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/09/2002

ORAL JUDGEMENT

1. The revisioners were accused of having committed offences punishable under Section 135 of the Customs Act and Section 120-B of the Indian Penal Code, and were tried by learned Additional Chief Metropolitan Magistrate, Ahmedabad, in Criminal Case No.3 of 1996, for having smuggled into India cellular phones, chargers, saffron, perfume and gold. They were caught on the 22nd December, 1995 by the Customs authorities, at the Sardar Patel International Air Port, Ahmedabad, when came back from Sharjah to Ahmedabad. They had left for Sharjah on the previous day, i.e. on the 21st December, 1995. The saffron was concealed in a bag. The gold was concealed in the footwear and in the undergarment of a young child. The Officers, acting on earlier tip off, intercepted them and found the smuggled articles. A complaint was lodged after recording statements, etc. Charge was framed against them. They pleaded not guilty and, ultimately, at the end of the Trial, they came to be convicted by

judgment and order rendered by learned Additional Chief Metropolitan Magistrate on the 4th December, 2000, in Criminal Case No.3 of 1996 and were sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.10000/- each, and, in default, to undergo simple imprisonment for a period of six months for offence punishable under Section 135 of the Customs Act. No separate punishment was given for offence punishable under Section 120-B of the Indian Penal Code.

2. The said judgment and order was carried in appeal before the City Sessions Court, at Ahmedabad, by preferring Criminal Appeal No.86 of 2000. The said appeal came to be dismissed by judgment and order rendered on the 12th February, 2002. The judgment and order of the learned Magistrate came to be confirmed.

3. Aggrieved by the said judgments and orders, the convicts have approached this Court with this revision application.

4. Learned Advocate, Mr. Keshwani, had, at the very initial stage, made it clear that the revision application may be admitted only on point of quantum of sentence and the matter came to be admitted.

5. It would also be appropriate to note that revisioner No.1 did not surrender to the custody after dismissal of the appeal and came to be arrested on issuance of non-bailable warrant. He is in custody thereafter. So far as revisioner No.2 is concerned, he has yet not surrendered to the custody and the non-bailable warrants are yet not served on him and he is still absconding.

6. Learned Advocate, Mr. Keshwani, submitted that the sentence is too harsh. He submitted that the minimum sentence prescribed for the offence for which the accused persons are convicted is three years, whereas the maximum sentence is seven years. The revisioners are poor persons and, therefore, ends of justice would be met, if minimum sentence is imposed. He submitted that revisioner No.1 was in custody, during the trial, for a period of about 28 months and, after dismissal of the appeal, he is in custody for about a period of two months. He submitted that revisioner No.2 was in custody, during the trial, for a period of about 32 months. According to Mr. Keshwani, the confessional statements indicate that the convicts are merely carriers and not the kingpin in the activity. He also submitted that the value of the goods seized is indicated at a very

inflated rate. The saffron seized from the convicts was sold at a much lesser price than the estimated price shown in the Panchnama. Mr. Keshwani placed reliance on the judgments of the Apex Court in the cases of State of Maharashtra v. Natwarlal Damodardas Soni, AIR 1980 SC 593 and Shah Guman Mal v. State of Andhra Pradesh, AIR 1980 SC 793 to submit that, in those cases, though the value of the goods smuggled was greater than the value of the goods smuggled in the present case, lesser punishment was inflicted by the Apex Court. He urged that the minimum sentence prescribed, i.e. three years, may be imposed and the revision may be allowed to that extent.

7. Learned Standing Counsel for respondent No.2-Customs Department, Mr. Shah, has vehemently opposed this revision application. His first objection is that the scope of revision is very limited. The second contention is that the Court below has considered all relevant aspects before imposing the sentence and, therefore, this Court may not interfere with the order. He has taken this Court through the operative part of the order and has emphasised on fact that this was a pre-planned activity of smuggling. He also submitted that the revisioners are habitual smugglers and they had earlier indulged in such activities four times. He also submitted that the conduct of both the revisioners, even after conviction, may be considered. He placed reliance on observations of this Court in Linder Frank Wolfgang v. Yogesh D. Shah & Another, 2002(1) GLR 395 and submitted that the revisioners are involved in activities which damage the economy of the country and deterrent punishment is desirable. In such circumstances, this Court may not exercise its revisional powers.

8. Learned Additional Public Prosecutor, Mr. Abichandani, appears for respondent No.1-State of Gujarat.

9. This Court is required to consider the only aspect of quantum of punishment and for that, it has to address itself whether it should exercise its revisional powers for reducing the sentence imposed by the Trial Court. The settled proposition of law, as it stands, is that revisional powers are to be exercised in rare cases where it is found that the order impugned is illegal, improper, perverse or is such as would result into gross miscarriage of justice.

10. To examine these aspects, the Court would be required to examine whether the order impugned herein suffers from any such defect. The Trial Court has, while

considering the question of quantum of punishment, considered the contentions regarding the convicts having remained in custody during the trial for a period of about 28 and 32 months, respectively, their economic position having deteriorated therefor and the question of grant of punishment lesser than the minimum prescribed. The Trial Court has negatived these aspects by observing that the revisioners are habitual offenders and they were involved in four such offences earlier. It is also observed that they had indulged in such activities detrimental to the interest of the country for personal gain; that they left for Sharjah on the 21st December, 1995 and returned from Sharjah on the next day, i.e. the 22nd December, 1995 with the smuggled goods; and that the total value of the smuggled goods comes to about Rs.20 lakhs. The Court has also considered the modus operandi adopted by the convicts.

11. The Appellate Court has also considered all these aspects while confirming the judgment of the Trial Court.

12. It would be appropriate to note that when question of conviction is not in challenge and only quantum part is to be considered while considering the revision application, it has to be examined whether the reasoning adopted by the Court below suffers from defects which would call for interference by the revisional Court. The learned Advocate Mr. Keshwani has relied on two judgments of the Apex Court. Having gone through those judgments, this Court is at loss to find out any absolute proposition which would prescribe that, in such eventuality, minimum punishment should be imposed. The punishment in those cases were confirmed in respective facts of those cases. In case of Linder Frank Wolfgang (supra), this Court made following observations, which are of great relevance. Hence, I quote :

> "9.1 In my view, the crimes professionally committed by the present accused is to be considered very seriously. The act of the accused inflicted severe trauma on the health and wealth of the Nation and the numbers of this neo-criminal tribe are rapidly escalating form a deterrent exemption to humane softness in sentencing. The penal strategy must be informed by social circumstances, individual factors and the character of the crime. India has been facing an economic crisis and gold smuggling has had a disastrous impact on the State's efforts to stabilize the counry's economy. Smugglers,

> hoarders, adulterators and others of their like have been busy in their under-world because the legal hardware has not been able to hold the invisible economic aggressor inside. In my view, there cannot be any dispute that for such offences under the Customs Act which affect the economy of the nation deterrent punishment has to be meted out. In my view, smuggling offences deserve to be dealt with due degree of seriousness and gravity having regard to their detrimental effect on the economy of the Nation as also the morale of the society. If a lenient view is taken of such offences, it would be difficult to maintain ethical standards and it would be difficult to maintain respect of the people for the judicial administration. The Parliament has exhibited its anxiety in regard to these matters by amending the Customs Act from time to time by enhancing the maximum sentence which could be imposed for such offences. In these circumstances, it is but right to view these offences with gravity and to impose a sentence without being carried away by considerations of misplaced sympathy or charity at the cost of the society and at the cost of the detrimental effect on the social structure and the national economy. These are offences where the deterrent theory of punishment has its justification and the sentence imposed must be made sufficiently deterrent."

13. Apart from the fact that the revisioners are habitual offenders and are engaged in these activities with pre-planning, their conduct also requires to be noted. Even after confirmation of conviction by the Appellate Court, they did not surrender to the custody and non-bailable warrant was required to be issued and that also is not possible to be served on revisioner No.2. Mr. Keshwani's submission for sympathetic consideration for reducing the quantum of sentence to the minimum prescribed, therefore, cannot be accepted. It also has to be considered that the revisioners were earlier involved in such activities for FOUR times. In the opinion of this Court, the sentence is imposed after considering relevant aspects. It is a balanced view which is taken by the Court below and the sentence cannot be considered to be too harsh or disproportionate to the offence, so as to call for any interference in exercise of revisional powers.

14. It was contended that the two ladies, namely, Salma, wife of revisioner No.1-Jalalluddin Jusabali Rojani and Nasim, wife of revisioner No.2-Ahsaankhan Habibkhan, who were found to be carrying eight and fourteen biscuits of gold, respectively have not been convicted and the revisioners are convicted for smuggling of gold. It is submitted that this may be considered as a relevant factor for reducing the quantum of punishment. In the opinion of this Court, the conviction is not challenged and when the appellants as well as their spouses were travelling as a group in the same flight, this may not be a relevant factor for reducing the quantum of punishment. The revision application, therefore, must fail and the same is dismissed. Rule is discharged.

[A.L. DAVE, J.]

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